

cont

b3.1 wherein said amphipathic lipid has an average particle size of 0.5 to 150 μm as a solid particulate and is dispersed in said surfactant and aqueous medium.

b3.2

5. (Amended) The dispersion of claim ~~11~~, wherein component (a) is a substance pseudo-ceramide.

b3.3

7. (Amended) A washing-away type cosmetic composition which is washed away after application to the skin or hair, which comprises the dispersion of any one of claims ~~11~~ to ~~15~~.

3. *18.* (Amended) A process for preparing a washing-away type cosmetic composition which is washed away after application to the skin or hair, which comprises mixing the dispersion of any one of claims ~~11~~ to ~~15~~ with the components of the cosmetic composition other than the dispersion, at not more than 50° C.

9. *19.* (Amended) A washing-away type cosmetic composition which is washed away after application to the skin or hair comprising:

(A) 0.01 to 10 wt.% of an amphipathic lipid having an average particle size of 0.5 to 150 μm as a solid particulate and having in the molecule thereof, at least one hydroxy group and at least one amide group; and

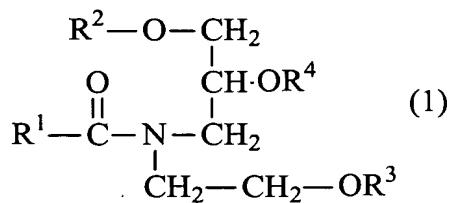
(b) 5 to 95 wt.% of a surfactant.--

Please add new claims 20 and 21 as follows:

b4

20. (New) The dispersion of claim ~~11~~, wherein the dispersion is prepared by heating the component (a), the component (b) and water to a temperature not less than the melting point of the component (a), thereby fusing them; and cooling to crystallize the component (a).

21. (New) The dispersion of claim ~~15~~, wherein the pseudo-ceramide is an amide derivative represented by the formula (1)



wherein R¹ and R² are the same or different and each independently represents a linear or branched, saturated or unsaturated C₇₋₃₉ hydrocarbon group which may be substituted by at least one hydroxyl group, and R³ and R⁴ are the same or different and each independently represents a hydrogen atom, a phosphate salt residue, a sulfate salt residue or a saccharide residue, with the proviso that at least one hydroxyl group is contained in the molecule.

SUPPORT FOR THE AMENDMENT

Support for an amendment to claims 11 and 19 is found on page 3, line 22 and on page 8, lines 16-23 of the specification. Support for the amendment to claim 15 is found on page 4, line 13 of the specification. Support for the amendments to claims 17-19 is found on page 1, lines 16-18 of the specification. Support for claim 20 is found in claim 16 as originally presented. Support for claim 21 is found on page 5, lines 5-13 of the specification. No new matter would be added in this application by entry of this amendment.

Upon entry of this amendment, Claims 11-21 will now be active in this application.

REQUEST FOR RECONSIDERATION

The present invention is directed to a dispersion of an amphipathic lipid as a solid particulate in a surfactant and aqueous medium.

Amphipathic lipids such as ceramide are reported as components in hair and skin compositions. Formulations of such materials in an amount greater than 2 wt.% can be

difficult due to the melting temperature of these materials. Attempts to address this problem by dissolving the ceramide and then emulsification have produced diminished effects.

Accordingly, amphipathic lipid compositions which provide for improved concentration are sought.

The present invention addresses the problem by providing a dispersion of an amphipathic lipid as a **solid particulate** dispersed in a surfactant and aqueous medium in which the amphipathic lipid has an average particle size of from 0.5 to 150 μm . Applicants have discovered that such an amphipathic lipid dispersion provides for increased concentrations of lipid while retaining the desirable effects. Such a dispersion is nowhere disclosed or suggested in the prior art of record.

The rejections of Claims 11-19 under 35 U.S.C. §103(a) over Nakamura et al. EP 487,958, Dubief et al. U.S. 5,679,357 and Pillai et al. U.S. 5,476,661 each in view of Vanlerberghe et al. U.S. 5985,255 or Young U.S. 4,152,272 are respectfully traversed.

None of the cite references discloses or suggests a dispersion of amphipathic lipid as a **solid particulate** of the claimed particle size.

Nakamura et al. describe a composition in which the amphipathic lipid is present as an emulsion (containing a liquid dispersoid) and not a suspension. The production process of Nakamura et al. (page 4, lines 18-20) describes a process in which the ceramide and surfactant are mixed and **melted** at a temperature of 65-95 °C, then water is added, whereby an anisotropic **liquid crystal phase** is formed. After cooling to room temperature, a lipid microdispersion is obtained.

Dubief et al also describe a composition as an emulsion. The reference describes a process of preparation of the dispersion in which a paste of ceramide and cationic surfactant

is formed and the mixture is melted at approximately 80 °C and then hot water (80-90°C) is added with vigorous stirring using and Ultraturrax, which produces an emulsion.

Pillai et al. does not disclose any solid particles or particle size whatsoever.

In contrast, the present invention is directed to a dispersion of amphipathic lipid as a **solid particulate** and surfactant in aqueous medium in which the average particle size of the lipid is from 0.5 to 150 µm. Applicants note that the claims have been amended to recite that the amphipathic lipid is present as a **solid particulate**. Since the cited reference nowhere discloses or suggests the lipid component dispersed as a solid particulate, the present invention is clearly not obvious from these references and accordingly withdrawal of the rejections under 35 U.S.C. §103(a) is respectfully requested. Moreover, since none of the primary references disclose or suggest the amphipathic lipid in the form of a solid particulate, there can be no suggestion of the claimed invention by the secondary references. The claim element of an amphipathic lipid in the form of a solid particulate is a claim limitation which is nowhere disclosed or suggested in the cited references and accordingly the claimed invention is not obvious over the cited art.

The rejections of Claims 15 and 17-19 under 35 U.S.C. §112, second paragraph, are obviated by appropriate amendment.

Applicants have now amended claims 17-19 to describe a "wash away" type composition as one which is washed away after application to the skin or hair such that those of ordinary skill in the would understand the metes and bounds of the claimed invention. Moreover, since the term appears in the preamble of the claim, the definiteness of the claimed subject matter would be clear to those of ordinary skill in the art. Claim 15 has been amended to recite that the substance is a pseudo-ceramide, a term well known to those of ordinary skill in the art, such that the metes and bounds of the claimed invention is clear to

subject matter would be clear to those of ordinary skill in the art. Claim 15 has been amended to recite that the substance is a pseudo-ceramide, a term well known to those of ordinary skill in the art, such that the metes and bounds of the claimed invention is clear to those of ordinary skill in the art. In view of Applicants' amendments withdrawal of the rejections under 35 U.S.C. §112, second paragraph, is respectfully requested.

Applicants submit that this application is now in condition for allowance and early notification of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Norman F. Oblon
Attorney of Record
Registration No. 24,618

Richard L. Chinn, Ph.D.
Registration No. 34,305



22850

Telephone: (703) 413-3000
Facsimile: (703) 413-2220
RLC:dbl
I:\atty\RLC\03270815-am2.wpd